

REMARKS

Claims 1-17 are pending. Reconsideration and allowance based on following arguments are respectfully requested.

Claims 1 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Huemann et al. (US 5,661,811) and Nicholson et al. (US 6,330,337) and claim 17 stands rejected under 35 U.S.C. §103(a) in view of Huemann, Nicholson and Smith et al. (GB 2 246 688). These rejections are respectfully traversed.

In the Office Action the Examiner argues that the controller 30 of Huemann corresponds to Applicants' claimed operating device because the control 30 operates in a manner to control the rear controls such as the volume control. Further, the Examiner states that Huemann fails to explicitly teach an abrupt attenuation such that the volume of the headphone is zero but asserts that according to MPEP 2114 "that apparatus must be distinguished from the prior art in terms of a structure rather than function and that the manner in which the claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus."

Applicants agree that the manner of use, i.e. the function as discussed in MPEP 2114 of the same device would not differentiate a claim from the teaching of the same device in the prior art. However, Applicant's respectfully submit that the same device is not taught by Huemann and Nicholson and thus claim 1 is differentiated from the combination of Huemann and Nicholson.

Applicants respectfully submit that the operating device recited in claim 1 is a different device from the controller 30 of Huemann. As stated in the Office Action the controller 30 carries out the same functions of the rear volume control such that it controls the rear volume control 56. Thus, the

control 30 becomes a volume control and performs as a volume control which allows for a range of volumes. Applicants are not claiming a device which controls the volume by providing a range a volume values as taught by Huemann. Applicants are claiming a device (operating means) that instantly shuts off the volume. This is a distinctly different device than a volume control.

Further, regarding MPEP 2114 the purpose of a device is not the "function" referred to therein but the function is instead how the device operates and thus is employed. Thus, in determining whether MPEP 2114 applies the first test is whether a same device is taught by the reference as is claimed. The second test would be if the distinction merely relies on how the device is employed. For example, if Applicants claimed a volume control, which Applicants are not claiming, and stated that it functions to turn down the volume and Huemann taught a volume control which turned up the volume then there is no distinction besides its intended function and employment of that function. However, Huemann does not teach what Applicants are claiming. There is no teaching of a device in Huemann that when operated outputs a control signal that abruptly attenuates an input signal so that the volume is zero. Huemann teaches a different type of device in which it controls the volume in increments.

The control device 30 of Huemann controls the audio controls (volume) of the back seat just like any volume control. This device is not structured to perform like Applicants claimed apparatus means. Thus, they are not equivalent and not the same devices. Thus, Applicants maintain that the control 30 of Huemann does not teach Applicants claimed operating device.

Thus, the combination of Huemann and Nicholson fail to teach each and every feature of Applicants independent claim 1. Likewise, dependent claims

16 and 17 are distinguished from the cited combinations for at least the reasons above as well as for the additional features they recite. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

Conclusion

For at least the above reasons Applicants respectfully submit Claims 1, 16 and 17 are distinguishable over the cited art. Favorable consideration and prompt allowance are earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad J. Billings Reg. No. 48,917 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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